

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

SHARON B. DAVIDSON,

Plaintiff,

v.

CAROLYN W. COLVIN¹, Acting
Commissioner of Social Security
Administration,

Defendant.

No. CV-11-0094-RHW

**ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT AND DENYING
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

Before the Court are the parties' cross-motions for summary judgment, ECF Nos. 14, 17. Maureen J. Rosette represents Plaintiff Sharon B. Davidson. Special Assistant United States Attorney, Richard M. Rodriguez, represents Defendant Commissioner of Social Security (the "Commissioner"). Plaintiff brings this action seeking judicial review under 42 U.S.C. § 405(g) of the Commissioner's final decision, which denied her application for supplemental security income ("SSI") under section 1614(a)(3)(A) of the Social Security Act. After reviewing the administrative record and briefs filed by the parties, the Court is fully informed.

¹ Carolyn W. Colvin became the Acting Commissioner of Social Security on February 14, 2013. Pursuant to Fed. R. Civ. P. 25(d), Carolyn W. Colvin is substituted for Michael J. Astrue as the defendant in this suit. No further action need be taken to continue this suit by reason of the last sentence of 42 U.S.C. § 405(g).

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1 For the reasons set forth below, the Court **denies** Plaintiff's Motion for Summary
2 Judgment, and directs entry of judgment in favor of Defendant.

3 **I. Jurisdiction**

4 Plaintiff's claim is properly before this Court pursuant to 42 U.S.C. §
5 405(g). On August 31, 2007, Plaintiff filed an application for SSI, alleging
6 disability beginning August 14, 2007. Tr. 99. After benefits were denied initially
7 and on reconsideration, Plaintiff requested a hearing before an administrative law
8 judge ("ALJ"). Tr. 78. Plaintiff appeared with counsel and testified at a hearing
9 held July 17, 2009, in Spokane, Washington. Tr. 10, 33. ALJ Moira Ausems
10 presided over the hearing, and Vocational Expert ("VE") Daniel McKinney was
11 also present and testified. *Id.* The ALJ denied benefits on December 4, 2009, Tr.
12 10-28, and the Appeals Council denied review on February 5, 2011, Tr. 1-3, which
13 made the ALJ's decision the Commissioner's final decision and subject to judicial
14 review.

15 **II. Sequential Evaluation Process**

16 The Social Security Act defines disability as the "inability to engage in any
17 substantial gainful activity by reason of any medically determinable physical or
18 mental impairment which can be expected to result in death or which has lasted or
19 can be expected to last for a continuous period of not less than twelve months." 42
20 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). A claimant shall be determined to be
21 under a disability only if his impairments are of such severity that the claimant is
22 not only unable to do his previous work, but cannot, considering claimant's age,
23 education and work experiences, engage in any other substantial gainful work
24 which exists in the national economy. 42 U.S.C. §§ 423(d)(2)(A), 1382c(a)(3)(B).

25 The Commissioner has established a five-step sequential evaluation process
26 for determining whether a person is disabled. 20 C.F.R. §§ 404.1520(a)(4)(i)-(v),
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1 416.920; *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999); *Lounsbury v.*
2 *Barnhart*, 468 F.3d 1111, 1114 (9th Cir. 2006).

3 Step 1: Is the claimant engaged in substantial gainful activities? 20 C.F.R.
4 §§ 404.1520(b), 416.920(b). Substantial gainful activity is work done for pay and
5 requires compensation above the statutory minimum. 20 C.F.R. §§ 404.1574,
6 416.972; *Keyes v. Sullivan*, 894 F.2d 1053, 1057 (9th Cir. 1990). If the claimant is
7 engaged in substantial activity, benefits are denied. 20 C.F.R. §§ 404.1571,
8 416.920(b). If she is not, the ALJ proceeds to step two.

9 Step 2: Does the claimant have a medically-severe impairment or
10 combination of impairments? 20 C.F.R. §§ 404.1520(c), 416.920(c). If the
11 claimant does not have a severe impairment or combination of impairments, the
12 disability claim is denied. A severe impairment is one that lasted or must be
13 expected to last for at least 12 months and must be proven through objective
14 medical evidence. 20 C.F.R. §§ 404.1508-09, 416.908-09. If the impairment is
15 severe, the evaluation proceeds to the third step.

16 Step 3: Does the claimant's impairment meet or equal one of the listed
17 impairments acknowledged by the Commissioner to be so severe as to preclude
18 substantial gainful activity? 20 C.F.R. §§ 404.1520(d), 416.920(d); 20 C.F.R.
19 § 404 Subpt. P. App. 1. If the impairment meets or equals one of the listed
20 impairments, the claimant is conclusively presumed to be disabled. *Id.* If the
21 impairment is not one conclusively presumed to be disabling, the evaluation
22 proceeds to the fourth step.

23 Step 4: Does the impairment prevent the claimant from performing work he
24 has performed in the past? 20 C.F.R. §§ 404.1520(e), 416.920(e). If the claimant is
25 able to perform his previous work, she is not disabled. *Id.* If the claimant cannot
26 perform this work, proceed to the fifth and final step.

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1 Step 5: Is the claimant able to perform other work in the national economy
2 in view of her age, education, and work experience? 20 C.F.R. §§ 404.1520(f),
3 416.920(f).

4 The claimant bears the burden of proof at steps one through four above.
5 *Molina v. Astrue*, 674 F.3d at 1104, 1111 (9th Cir. 2012); *Lockwood v. Comm'r of*
6 *Soc. Sec. Admin.*, 616 F.3d 1068, 1071 (9th Cir. 2010). If the analysis proceeds to
7 step five, the burden shifts to the Commissioner to establish that (1) the claimant is
8 capable of performing other work; and (2) such work “exists in significant
9 numbers in the national economy.” 20 C.F.R. §§ 404.1560(c); 416.960(c)(2);
10 *Beltran v. Astrue*, 676 F.3d 1203, 1206 (9th Cir. 2012).

11 III. Standard of Review

12 A district court's review of a final decision of the Commissioner of Social
13 Security is governed by 42 U.S.C. § 405(g). The scope of review under § 405(g) is
14 limited, and the Commissioner's decision will be disturbed “only if it is not
15 supported by substantial evidence or is based on legal error.” *Hill v. Astrue*, 698
16 F.3d 1144, 1158-59 (9th Cir. 2012) (citing § 405(g)). Substantial evidence is “more
17 than a mere scintilla but less than a preponderance; it is such relevant evidence as a
18 reasonable mind might accept as adequate to support a conclusion.” *Sandgathe v.*
19 *Chater*, 108 F.3d 978, 980 (9th Cir.1997) (citation omitted). In determining
20 whether this standard has been satisfied, “a reviewing court must consider the
21 entire record as a whole and may not affirm simply by isolating a ‘specific
22 quantum of supporting evidence.’” *Robbins v. Soc. Sec. Admin.*, 466 F.3d 880, 882
23 (9th Cir. 2006) (citation omitted).

24 In reviewing a denial of benefits, a district court may not substitute its
25 judgment for that of the ALJ. *Matney v. Sullivan*, 981 F.2d 1016, 1019 (9th Cir.
26 1992). If the evidence in the record “is susceptible to more than one rational
27 interpretation, [the court] must uphold the ALJ's findings if they are supported by
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1 inferences reasonably drawn from the record.” *Molina*, 674 F.3d at 1111. Further, a
2 district court “may not reverse an ALJ’s decision on account of an error that is
3 harmless.” *Id.* An error is harmless “where it is inconsequential to the [ALJ’s]
4 ultimate nondisability determination.” *Id.* at 1115 (quotation and citation omitted).
5 The party appealing the ALJ’s decision generally bears the burden of establishing
6 that it was harmed. *Shinseki v. Sanders*, 556 U.S. 396, 409–10 (2009).

7 **IV. Statement of Facts**

8 The facts of the case are set forth in detail in the transcript of proceedings,
9 and only briefly summarized here. Plaintiff was 41 years old when she filed for SSI
10 benefits on August 24, 2007. Tr. 99. At the time of the hearing on July 7, 2009,
11 Plaintiff resided in a half-way house in Spokane, Washington. Tr. 16, 38.

12 Washington Department of Corrections records indicate that Plaintiff was
13 convicted of first degree assault in 1999. Tr. 230, 240. Plaintiff received an eight
14 year sentence for her role as an accomplice in a plot to bomb a community
15 corrections office. *Id.* Plaintiff’s live-in boyfriend at the time constructed an
16 improvised explosive device, of which she was aware. *Id.* The device was used in a
17 detonation that resulted in severe injuries to a Gray’s Harbor Community
18 Correction Officer. *Id.* Plaintiff was released from prison in October of 2006, and
19 relocated to Spokane. Tr. 37-38, 100, 215.

20 Although she did not complete high school, Plaintiff earned a GED in 1984.
21 Tr. 155. While incarcerated, Plaintiff obtained a Washington State University
22 certification for master gardening in 2002, and an ornamental horticultural
23 technician certificate through Tacoma Community College in 2003. Tr. 124, 155.
24 After release, Plaintiff worked in a bakery packaging bread. Tr. 39, 151. Plaintiff
25 then quit the bakery and worked for several months as a horticultural worker in a
26 greenhouse. Tr. 41-43, 151. Thereafter, Plaintiff again terminated her employment,
27

1 and labored as a janitor until the end of August 2007 -- when she filed her
2 application for SSI benefits. Tr. 42, 151.

3 **V. The ALJ's Findings**

4 The ALJ determined that Plaintiff was not disabled under section
5 1614(a)(3)(A) of the Social Security Act and denied her application for SSI,
6 protectively filed on August 24, 2007. *See* ALJ's Decision, Dec. 4, 2009, Tr. 10-
7 28.

8 At **step one**, the ALJ found that Plaintiff had not engaged in substantial
9 gainful activity since her application date. Tr. 10.

10 At **step two**, the ALJ found that Plaintiff's major depressive disorder,
11 anxiety disorder, undifferentiated somatoform disorder, personality disorder, and
12 cervical degenerative disk disease were severe and they more than minimally
13 limited Plaintiff's ability to work. Tr. 12. (citing 20 C.F.R. § 416.920(c)).
14 However, the ALJ found that Plaintiff's cystic tumors of the ovary, hernia, GERD,
15 asthma/chronic obstructive pulmonary disease, right calf strain, low back pain,
16 borderline intellectual functioning, and alleged dizzy spells were not severe
17 impairments, as they imposed no more than a minimal or *de minimis* limitation
18 upon her ability to do work-related activities. Tr. 12-14.

19 At **step three**, the ALJ found that Plaintiff did not have an impairment or
20 combination of impairments that met or medically equaled one of the listed
21 impairments in 20 C.F.R. § 404, Subpt. P, App. 1 ("the Listings"). Tr. 15.
22 The ALJ considered whether Plaintiff's spinal impairment met a Listing for 1.04 -
23 *Disorders of the Spine*, and determined that it did not because there was "no
24 evidence of root compression characterized by neuroanatomic distribution of pain,
25 limitation of motion of the spine, motor loss, accompanied by sensory or reflex
26 loss, and positive straight leg raising test." Tr. 15. The ALJ also "considered
27 singly and in combination" whether Plaintiff's mental impairments met Listings:
28

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1 12.04 - Affective Disorder; 12.06 - Anxiety-Related Disorders; 12.07 -
2 Somatoform Disorder, and; 12.08 - Personality Disorders.

3 The ALJ considered whether the “paragraph B” criteria were satisfied and
4 determined they were not because the mental impairments did not result in at least
5 two “marked” restrictions or difficulties. Tr. 15. The ALJ found that Plaintiff had
6 mild restriction in activities of daily living, moderate difficulties in social
7 functioning, moderate difficulties with regard to concentration, persistence or pace,
8 and zero episodes of decompensation which have been extended to duration. *Id.*
9 The ALJ found insufficient evidence to establish the presence of the “paragraph C”
10 criteria. *Id.*

11 At **step four**, relying on the VE’s testimony, the ALJ found that Plaintiff had
12 the residual functional capacity (“RFC”) to perform light work. Tr. 16. The ALJ
13 limited Plaintiff to SVP 3 level tasks, due to the combination of physical
14 impairments and mental symptoms and added a limitation that Plaintiff should
15 have no more than casual contact with the general public. The ALJ then
16 determined that Plaintiff could not perform past relevant work as a horticultural
17 worker (heavy, unskilled, SVP 2), because the VE testified that an individual with
18 Plaintiff’s RFC could not perform such work. Tr. 27, 58-63.

19 At **step five**, the ALJ found that considering her age, education, work
20 experience, and RFC, Plaintiff could perform a significant number of existing jobs
21 in the national economy. *Id.* The ALJ based this decision on the VE’s testimony
22 and her review of the Dictionary of Occupational Title (“DOT”) that individuals
23 with Plaintiff’s age, education, work experience, and RFC can perform jobs like
24 small product assemblers, small parts assemblers, packing line workers, and
25 packing line inspectors. Tr. 27-28, 60-63. The VE also testified that similar
26 individuals limited to sedentary work could still perform these same jobs. Tr. 60-
27

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63. As a result of these findings, the ALJ concluded that Plaintiff was not disabled under the meaning of the Social Security Act. Tr. 28.

VI. Issues for Review

Plaintiff alleges the ALJ failed to properly evaluate the medical and psychological opinion evidence, and that she was “much more limited from a psychological standpoint” than the ALJ’s determination. ECF No. 15 at 10. In other words, Plaintiff challenges the ALJ’s residual functional capacity assessment regarding her mental limitations. ECF No. 19 at 1. Specifically, Plaintiff argues the ALJ improperly rejected the opinions of treating psychologist John Arnold, Ph.D., and examining psychologist Debra Brown, Ph.D. *Id.* at 10-16. Defendant contends the ALJ properly evaluated the medical evidence and the Commissioner’s decision is free of legal error and supported by substantial evidence. ECF No. 18 at 6-12. For the reasons described below, the Court agrees with Defendant.

VII. Discussion

A. The ALJ Properly Evaluated the Medical and Psychological Opinion Evidence Re: Plaintiff’s Mental Impairments

The ALJ is responsible for determining credibility and resolving ambiguities and conflicts in the medical evidence. *See Reddick v. Chater*, 157 F.3d 715, 722 (9th Cir. 1998). Where the medical evidence in the record is not conclusive, “questions of credibility and resolution of conflicts” are solely the functions of the ALJ. *Sample v. Schweiker*, 694 F.2d 639, 642 (9th Cir. 1982). In such cases, “the ALJ’s conclusion must be upheld.” *Morgan v. Comm’r of the Social Sec. Admin.*, 169 F.3d 595, 601 (9th Cir.1999). Determining whether inconsistencies in the medical evidence “are material (or are in fact inconsistencies at all) and whether certain factors are relevant to discount” the opinions of medical experts “falls within this responsibility.” *Id.* at 603.

1 In resolving questions of credibility and conflicts in the evidence, an ALJ's
2 findings “must be supported by specific, cogent reasons.” *Reddick*, 157 F.3d at
3 725. The ALJ can do this “by setting out a detailed and thorough summary of the
4 facts and conflicting clinical evidence, stating his interpretation thereof, and
5 making findings.” *Id.* The ALJ also may draw inferences “logically flowing from
6 the evidence.” *Sample*, 694 F.2d at 642. Further, the Court itself may draw
7 “specific and legitimate inferences from the ALJ's opinion.” *Magallanes v. Bowen*,
8 881 F.2d 747, 755, (9th Cir.1989).

9 In evaluating medical or psychological evidence, a treating or examining
10 physician's opinion is entitled to more weight than that of a non-examining
11 physician. *Benecke v. Barnhart*, 379 F.3d 587, 592 (9th Cir. 2004); *Lester v.*
12 *Chater*, 81 F.3d 821, 830 (9th Cir. 1995). If the treating or examining physician's
13 opinions are not contradicted, they can be rejected only with clear and convincing
14 reasons. *Lester*, 81 F.3d at 830. If contradicted, the opinion can only be rejected for
15 “specific” and “legitimate” reasons that are supported by substantial evidence in
16 the record. *Andrews v. Shalala*, 53 F.3d 1035, 1043 (9th Cir. 1995). Historically,
17 the courts have recognized conflicting medical evidence, the absence of regular
18 medical treatment during the alleged period of disability, and the lack of medical
19 support for doctors' reports based substantially on a claimant's subjective
20 complaints of pain as specific, legitimate reasons for disregarding a treating or
21 examining physician's opinion. *Flaten v. Sec. of Health and Human Servs.*, 44 F.3d
22 1453, 1463–64 (9th Cir. 1995).

23 The ALJ is not bound to a medical source's opinion concerning a claimant's
24 limitations on the ultimate issue of disability. *Magallanes*, 881 F.2d at 751. If the
25 record as a whole does not support the medical source's opinion, the ALJ may
26 reject that opinion. *Batson v. Comm'r of Soc. Sec. Admin.*, 359 F.3d 1190, 1195
27 (9th Cir. 2004).

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1 **1. Summary of Medical and Psychological Opinion Evidence**

2 Washington State Prison records indicate that Plaintiff was examined by
3 David Grubb, M.D., and Deborah Miller, MSW, between July 1, 2005 and
4 September 11, 2006. Tr. 201, 211-30. Both Dr. Grubb and Ms. Miller documented
5 Plaintiff's major depression, attention deficit hyperactivity disorder, and anxiety.
6 *Id.* On July 1, 2005, Dr. Grubb noted that Plaintiff "had no psychological or
7 psychiatric treatment as an outpatient and no psychiatric hospitalizations" and
8 there was "no history of psychosis or thought disorder." Tr. 229. In addition,
9 Plaintiff began taking psychotropic medications for depression and anxiety while
10 incarcerated, which improved her mood. Tr. 211-30, 240. On September 9, 2006,
11 shortly before her release, Ms. Miller indicated that "[n]o signs or symptoms of an
12 underlying thought disorder were observed . . . Patient appears to be functioning
13 relatively well." Tr. 211.

14 After her release, Plaintiff went to the Community Health Association of
15 Spokane ("CHAS") clinic in 2006. Tr. 248-65, 285-95. Plaintiff sought treatment
16 for depression, anxiety, and insomnia, and neck pain from her primary care
17 physician Michael Szymanski, ARNP. *Id.* Dr. Szymanski examined Plaintiff
18 numerous times between December 19, 2006 and November 1, 2007, *Id.*
19 Thereafter, Plaintiff returned to the CHAS clinic and was treated from November
20 13 2007 to April 23, 2009, for both physical and mental impairments. Tr. 329-424.

21 On August 14, 2007, John F. McRae, Ph.D., examined Plaintiff in
22 connection with a psychological and learning disability evaluation. Tr. 240. Dr.
23 McRae diagnosed Plaintiff with major depression, recurrent without psychotic
24 features, and anxiety disorder NOS (elements of generalized anxiety disorder and
25 PTSD). Tr. 243. Dr. McRae conducted diagnostic testing and found that although
26 Plaintiff's IQ fell within the borderline range, he felt that her anxiety probably
27 interfered with the IQ testing, and that Plaintiff was more likely in the low-average
28

1 IQ range. Tr. 242. Plaintiff was assessed a Global Assessment of Functioning²
 2 (“GAF”) Score of 55, indicative of moderate symptomology.³ Dr. McRae opined
 3 that it would be beneficial for Plaintiff to pursue work using her experience and
 4 background as a master gardener. Tr. 243.

5 On September 25, 2007, John Arnold, Ph.D., evaluated Plaintiff. Tr. 244-47.
 6 Plaintiff’s Department of Social and Health Services (“DSHS”) case worker
 7 referred her to Dr. Arnold, an employee of the CHAS clinic. Tr. 244. Dr. Arnold
 8 diagnosed Plaintiff with major depression (recurrent, moderate), anxiety disorder
 9 (NOS with PTSD features), and a rule out diagnosis of undifferentiated
 10 somatoform disorder. Tr. 246. Dr. Arnold also diagnosed a personality disorder,
 11 NOS with paranoid and histrionic features. *Id.* Dr. Arnold assessed Plaintiff a GAF
 12 score of 58. *Id.* Dr. Arnold noted that Plaintiff’s “academic and employment
 13 history suggests at least borderline intellectual abilities,” yet he did not conduct
 14 any formal IQ testing which admittedly would have been necessary “to garner a
 15 more accurate estimation of her functioning in this area.” *Id.* After this initial
 16 assessment, Dr. Arnold treated Plaintiff from September 2007 to April 2009. Tr.
 17 329-424.

18 On October 29, 2007, Mary A. Gentile, Ph.D., submitted a Mental Residual
 19 Functional Capacity Assessment and a Psychiatric Review Technique. Tr. 267-70,
 20 271-84. Dr. Gentile, a non-examining and consulting physician, opined that

21
 22 ² “A GAF score is a rough estimate of an individual’s psychological, social, and
 23 occupational functioning used to reflect the individual’s need for treatment.”
 24 *Vargas v. Lambert*, 159 F.3d 1161, 1164 n.2 (9th Cir. 1998).

25 ³ “A GAF of 51–60 indicates ‘[m]oderate symptoms (e.g., flat affect and
 26 circumstantial speech, occasional panic attacks) or moderate difficulty in social,
 27 occupational, or school functioning (e.g., few friends, conflicts with peers or co-
 28 workers).’” (quoting Diagnostic and Statistical Manual of Mental Disorders (Text
 Revision 4th ed. 2000) (“DSM–IV–TR”) at 34)).

1 Plaintiff had mainly mild to moderate non-exertional limitations in the areas of
2 understanding and memory, sustained concentration and persistence, social
3 interaction, and adaptation. Tr. 267-68. Dr. Gentile opined Plaintiff was “capable
4 of simple and well-learned complex tasks.” Tr. 269. Dr. Gentile also included
5 limitations regarding Plaintiff’s attention and concentration, interaction with the
6 general public and coworkers, and time to adjust to changes in work tasks. Tr. 269.

7 On March 24, 2008, Dr. Arnold again evaluated Plaintiff. Tr. 425-28. Dr.
8 Arnold again diagnosed Plaintiff with major depression and anxiety disorder, and
9 personality disorder, including undifferentiated somatoform disorder. Tr. 428. Dr.
10 Arnold assessed Plaintiff a GAF score of 55. *Id.* On April 23, 2008, Dr. Arnold
11 submitted his report in conjunction with a DSHS psychological evaluation. Tr.
12 430-33. Dr. Arnold opined that Plaintiff had mostly moderate cognitive and social
13 limitations, with the exception of her ability to exercise judgment and make
14 decisions (cognitive factor) and the ability to relate appropriately to co-workers
15 and supervisors (social factor), which he rated as markedly limited. Tr. 432.

16 On April 24, 2009, Debra D. Brown, Ph.D., completed a psychological
17 evaluation of Plaintiff. Tr. 311-18. Dr. Brown’s diagnoses included major
18 depression (single episode, moderate), generalized anxiety disorder, personality
19 disorder (with borderline features), borderline intellectual functioning, and
20 included an obsessive-compulsive disorder diagnosis. Tr. 317-18. Dr. Brown also
21 rated Plaintiff’s GAF score to be 41, indicative of severe symptomology. Tr. 317.
22 Notably, Dr. Brown concluded, “[u]ntil the interpersonal and intrapersonal
23 difficulties are worked through in psychotherapy, those added to the cognitive
24 deficits will keep Ms. Davidson unemployable.” Tr. 318. Dr. Brown’s submitted
25 her report along with a second DSHS psychological evaluation. Tr. 306-10. Dr.
26 Brown opined that Plaintiff was mostly moderately limited in regard to cognitive
27 factors, but markedly limited in her social abilities to relate appropriately to co-

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1 workers and supervisors, to interact with the general public, and to tolerate the
2 pressures and expectations of a normal work setting. Tr. 308.

3 **2. John Arnold, Ph.D.**

4 Plaintiff argues the ALJ improperly rejected the opinions of Dr. Arnold, her
5 treating psychologist. ECF No. 15 at 13-15. The ALJ found that Dr. Arnold's GAF
6 score of 58 from his September 25, 2007, opinion was accorded significant weight.
7 Tr. 26. However, the ALJ gave the psychological evaluation dated March 24, 2008,
8 little weight. *Id.* The ALJ stated:

9 [Dr. Arnold] opined the claimant had mostly moderate cognitive and
10 social limitations, except she was markedly limited in exercising
11 judgment and making decisions and relating to coworkers and
12 supervisors (Exhibit 5 F). This assessment is not consistent with the
13 mental status examinations in the treatment notes wherein it is
14 reported the claimant has good to fair judgment. Moreover, aside from
15 the claimant's self-reports of isolating, there is very little evidence in
16 the record related to the claimant's social functioning. She has no
17 record of being fired from past employment and she has given
18 inconsistent statements related to why she has left previous jobs⁴. In
19 other words, there is no evidence of significant problems with
20 coworkers and supervisors.

21 Tr. 26.

22 Here, the ALJ's rejection of Dr. Arnold's opinion need only be supported by
23 specific and legitimate reasons, as it was contradicted by Drs. Gentile and McRae's
24 opinions that Plaintiff's mental impairments did not prevent her from working. Tr.
25 240-43, 267-69, 281-83; *see Tommasetti v. Astrue*, 533 F.3d 1035, 1041 (9th Cir.
26 2005). The ALJ permissibly rejected Dr. Arnold's opinion as to Plaintiff's
27 judgment and decision making, as it was not consistent with his own mental status
28 examination. This is a "specific and legitimate reason" for rejecting Dr. Arnold's

⁴ The ALJ found that "claimant's statements concerning the intensity, persistence,
and limiting effects of [her] symptoms are not credible . . ." Tr. 17. Plaintiff has not
challenged the ALJ's credibility findings.

1 opinion. *See Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9th Cir. 2005). Also, the
2 Court finds there is substantial evidence to support the ALJ's finding. Dr. Arnold
3 consistently noted that Plaintiff had "good to fair judgment" throughout her 18
4 months of treatments. *See, e.g.*, Tr. 244-47, 251, 295, 338, 341, 344, 353, 359, 360,
5 364, 375, 381, 385-87, 394, 405.

6 Likewise, the ALJ properly concluded that Plaintiff was not markedly
7 limited in terms of social functioning. Tr. 25-26. Plaintiff alleged that she left both
8 her bakery and greenhouse jobs because she was yelled at by a co-worker and later
9 by a supervisor. Tr. 40-41 The ALJ found that "based on contradictory statements
10 in the record regarding why the claimant left her bakery and greenhouse jobs, there
11 is no evidence the claimant has had problems in the past with co-workers and
12 supervisors." Tr. 25-26. This conclusion was supported by Dr. McRae's evaluation
13 in which Plaintiff admitted she left the bakery in order to find better pay, and quit
14 the greenhouse job because she did not care for the hours. Tr. 240. Dr. McRae also
15 reported that "[Plaintiff] has worked now as a janitor for the past month and does
16 not like that work but is performing it." *Id.* This testimony contradicts Dr. Arnold's
17 check-box report that found Plaintiff would experience marked limitation and be
18 unable to relate appropriately to co-workers and supervisors. Tr. 432; *See Morgan*,
19 169 F.3d at 602 (noting "evidence that supported the ALJ's determination included,
20 among other things, testimony from the claimant that conflicted with her treating
21 physician's opinion.") (internal citation omitted).

22 In sum, the Court finds the ALJ rejected Dr. Arnold's opinion for reasons
23 that were specific and legitimate and supported by substantial evidence.

24 **3. Debra Brown, Ph.D.**

25 Plaintiff next contends that the opinion of Dr. Brown, her examining
26 psychologist, was accorded improper weight. ECF No. 15 at 9; Tr. 311-18. The
27 ALJ gave Dr. Brown's April 24, 2009, psychological evaluation little weight. Tr.

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1 26. Dr. Brown found that Plaintiff had moderate cognitive limitations and mostly
2 marked social limitations. Tr. 308. Defendant argues that Dr. Brown's opinion was
3 properly accorded little weight "as it was inconsistent with the rest of the medical
4 evidence, which failed to support the level of limitations found by Dr. Brown."
5 ECF No. 18 at 9. The Court agrees the ALJ properly rejected Dr. Brown's opinion
6 for the reasons stated below.

7 Here, in the case of a contradicted opinion, the ALJ may reject the testimony
8 of an examining physician, when she gives specific, legitimate reasons for doing
9 so, and those reasons are supported by substantial record evidence. *Lester*, 81 F.3d
10 at 831. However, "[t]he opinion of a non-examining physician cannot by itself
11 constitute substantial evidence that justifies the rejection of the opinion of either an
12 examining physician or a treating physician. *Id.* (noting other contradictory
13 evidence includes laboratory reports, medical reports, and claimant's testimony).
14 To the extent that an examining physician's opinions are based upon the claimant's
15 subjective complaints, the ALJ may cite the unreliable nature of the claimant's
16 complaints as a reason for rejecting the examining physician's opinion. *Morgan*,
17 169 F.3d at 602.

18 The ALJ first noted that Dr. Brown diagnosed Plaintiff with a GAF score of
19 41, indicating serious symptomology. Tr. 317. By contrast, Drs. McRae and
20 Arnold both rated Plaintiff's GAF scores at 55 and 58, indicative of only moderate
21 symptoms. Tr. 243, 428. The ALJ next questioned Dr. Brown's diagnosis of
22 borderline intellectual functioning, which was not substantiated by the record. Tr.
23 26. This diagnosis, and the reasons for rejecting it, was discussed in detail by the
24 ALJ at step 2. Tr. 14. The ALJ's conclusion that Plaintiff's IQ did not fall in the
25 borderline range was further supported by Dr. McRae, who opined after diagnostic
26 testing that Plaintiff had no learning disability, and that her IQ likely fell in the
27 low-average range. Tr. 242. The ALJ also cited to Department of Corrections'

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1 psychiatric records which revealed no evidence of a learning disability in rejecting
2 Dr. Brown's assessment of Plaintiff's cognitive functioning. Tr. 17-18. Finally, the
3 ALJ relied on treatment notes in the record to reject Dr. Brown's opinion that
4 Plaintiff's mental impairments were not as severe as assessed, when controlled by
5 medication. Tr. 19-20, 26; *see Warre v. Comm'r of Social Sec. Admin.*, 439 F.3d
6 1001, 1006 (9th Cir. 2006) ("Impairments that can be controlled effectively with
7 medication are not disabling for the purpose of determining eligibility for SSI
8 benefits."); *see also* 20 C.F.R. § 416.929(c)(3).

9 Based on these inconsistencies, and as discussed *supra*, the ALJ properly
10 rejected Dr. Brown's opinion, as it was based in a large part on Plaintiff's
11 subjective complaints regarding her cognitive and social limitations – a credibility
12 finding which Plaintiff does not challenge. Tr. 18; *Morgan*, 169 F.3d at 602 ("A
13 physician's opinion of disability [which is] premised to a large extent upon the
14 claimant's own accounts of his symptoms and limitations may be disregarded
15 where those complaints have been properly discounted.") (internal quotations and
16 citation omitted).

17 Thus, the ALJ properly weighed the medical and psychological evidence and
18 stated specific and legitimate reasons supported by substantial evidence in
19 rejecting the opinions of Drs. Arnold and Brown.

20 **B. The ALJ's Residual Functional Capacity Assessment**

21 Plaintiff argues the ALJ erred in assessing her residual functional capacity
22 ("RFC"), regarding her mental impairments. ECF No. 19 at 1. This argument
23 assumes that the opinions of Drs. Arnold and Brown were not properly discounted.
24 However, the Court has determined that the ALJ properly evaluated the opinions of
25 Plaintiff's treating and examining physicians. This Court affirms the ALJ's
26 determination of a plaintiff's RFC if the ALJ applied the proper legal standard and
27 the decision is supported by substantial evidence. *Morgan*, 169 F.3d at 599.

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1 Furthermore, the ALJ need only take into account limitations for which there was
2 record support and not based solely on a plaintiff's subjective complaints. *Bayliss*,
3 427 F.3d at 1217.

4 Here, the ALJ specifically included moderate mental limitations, as assessed
5 by the medical providers, and supported by substantial evidence in the record as a
6 whole. Tr. 16-26. Therefore, because the ALJ's RFC included only those
7 limitations which were supported by substantial evidence, her decision was free of
8 legal error.

9 **VIII. Conclusion**

10 Having reviewed the record in its entirety, and the ALJ's conclusions, the
11 Court finds the ALJ's decision is free of legal error and supported by substantial
12 evidence.

13 Accordingly, **IT IS HEREBY ORDERED:**

- 14 1. Plaintiff's Motion for Summary Judgment, ECF No. 14 is **DENIED**.
15 2. Defendant's Motion for Summary Judgment, ECF No. 17 is **GRANTED**.
16 3. The Commissioner's decision denying Plaintiff benefits is **AFFIRMED**.
17 4. The District Court Executive is directed to enter judgment in favor of
18 Defendant and against Plaintiff.

19 **IT IS SO ORDERED.** The District Court Executive is directed to enter this
20 Order, forward copies to counsel and **close the file**.

21 **DATED** this 25th day of March, 2013.

22
23 s/Robert H. Whaley
24 ROBERT H. WHALEY
25 Senior United States District Judge
26
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28

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